

\$~94 (2022 Cause List)

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 28th January, 2022

+ CM(M) 89/2022 & CM APPL. 4697/2022

KAILASH NATH AGGARWAL Petitioner

**Through: Mr. Alok Pandey & Ms. Nidhi
Malhotra, Advocates.**

versus

SUNILA DASS & ANR. Respondents

Through: Mr. V.P. Rana, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

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The proceedings in the matter have been conducted through video conferencing.

1. The petitioner- Kailash Nath Aggarwal [hereinafter, “defendant”], is the sole defendant in CS No. 19558/2016 pending in the Court of the Additional District Judge-09, Central District, Tis Hazari Courts, Delhi [hereinafter, “the Trial Court”]. By way of this petition under Article 227 of the Constitution, he assails an order of the Trial Court dated 17.11.2021, by which his application under Order I Rule 10 of the Code of Civil Procedure, 1908 [hereinafter, “CPC”] for impleadment of a third party as a defendant to the suit was

dismissed.

2. The respondent no.1 – Sunila Dass [hereinafter, “plaintiff”] filed the suit before this Court in the year 2014, and arrayed the petitioner as the sole defendant. The case of the plaintiff was that she had agreed to purchase a cottage in a property bearing no. 7A/1, Rajpur Road, Delhi [hereinafter, “the property”], which was being redeveloped in the year 2004. The re-development was being carried out by a company of which the respondent no. 2- Raj Kumar Jain [hereinafter, “R.K. Jain”] was a director. The plaintiff’s case was that the defendant was also negotiating the purchase of a cottage in the same development, and in July, 2011, he requested the plaintiff for a friendly loan of ₹50 lakhs for a period of one year. The plaintiff has averred that she had transferred the amount of ₹50 lakhs from her bank account to the bank account of the defendant on 29.07.2011. In view of the defendant’s failure to repay the loan amount, the plaintiff has sought recovery of the said amount of ₹50 lakhs alongwith interest thereupon.

3. The defendant filed a written statement referring to a transaction involving one Ravi Kumar, a Non-Resident Indian, and R.K. Jain. According to the defendant, there was a litigation overseas between Ravi Kumar and one Umesh Chand Jain, one of the co-owners of the Rajpur Road property. Ravi Kumar had succeeded in the suit, which was based upon a mortgage of the property to him. The defence of the defendant is that the amount of ₹50 lakhs was received by him from the plaintiff only to be forwarded to R.K. Jain in order to enable him to satisfy the decree in favour of Ravi Kumar. He claims to

have forwarded the money advanced by the plaintiff immediately thereafter to Ravi Kumar, in view of which R.K. Jain issued cheques in favour of the plaintiff.

4. After filing of the written statement, the defendant filed the subject application under Order I Rule 10 of the CPC, principally on the same ground. He sought impleadment of R.K. Jain as a defendant to the suit.

5. The application was opposed by the plaintiff on the ground that R.K. Jain has no concern with the transaction in question which concerns only the recovery of the amount advanced by the plaintiff to the defendant alongwith interest. The plaintiff has specifically denied that any payment was made to R.K. Jain by the defendant on her account, or at her request.

6. By the impugned order, the Trial Court held that the plaintiff has filed a simple recovery suit, and the defendant's case that the money was obtained for re-routing to R.K. Jain is a matter which he can establish by calling R.K. Jain as a witness. The plaintiff being *dominus litis*, the Trial Court did not consider it appropriate to compel her to add R.K. Jain as a defendant. The Court has recorded that R.K. Jain can neither be termed as a necessary party, nor a proper party, to the suit as framed by the plaintiff.

7. Having heard Mr. Alok Pandey, learned counsel for the defendant, and Mr. V.P. Rana, learned counsel for the plaintiff, who appears on advance notice, I do not find any infirmity in the order of the learned Trial Court so as to warrant the interference of this Court under Article 227 of the Constitution.

8. As held by the Trial Court, the plaintiff's suit is a suit for recovery of an amount advanced by her to the defendant. The receipt of the amount is admitted by the defendant. His case that the amount was credited by the plaintiff to his account for further remittance is his defence to the suit, as made out in the written statement. Whether the defendant succeeds in this defence or not, depends on the evidence the parties lead at the trial. The adjudication of the cause of action pleaded by the plaintiff against the defendant does not require R.K. Jain to be made a party/defendant to the suit.

9. Mr. Pandey relies upon a communication dated 30.07.2011 addressed by R.K. Jain, as a director of a company by the name of PRJ Enterprises Ltd. [hereinafter, "PRJ"], to the defendant. In the said communication, R.K. Jain has noted "mutual discussions" that the repayment of the amount advanced by the plaintiff would be ensured out of realisation from certain other allottees in the property, and that he has entrusted two security cheques to the plaintiff. This communication does not establish a relationship between the plaintiff and R.K. Jain; indeed, it is a letter addressed by R.K. Jain (on behalf of PRJ) to the defendant alone. It may also be noted that the said communication is addressed by R.K. Jain on behalf of a company but the impleadment sought is of R.K. Jain in his personal capacity. The said communication, therefore, does not assist the defendant.

10. The two undated cheques which, according to the defendant, were given to the plaintiff by R.K. Jain as security were also issued on behalf of PRJ. Whatever the case made out by the defendant, it is undisputed that the defendant has not sought impleadment of this

company at all, but only of R.K Jain in his personal capacity.

11. Mr. Rana relies upon the judgments of the Supreme Court in *Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors*¹ and *Mumbai International Airport Private Ltd vs. Regency Convention Centre and Hotels Pvt Ltd & Ors*². In *Ramesh Hirachand Kundanmal*, the Court has made a clear distinction between a “necessary party” to a suit, and someone who may only be a “necessary witness”. In *Mumbai International Airport*, the Court has elaborated upon the considerations governing impleadment of parties. Even with regard to impleadment of a necessary party as a defendant, the Court has held that, if the plaintiff opposes such impleadment, the Court may dismiss the suit for non-joinder of a necessary party, instead of impleading the party.

12. In the present case, the findings of the Trial Court that the suit is a simple recovery suit against the defendant does not appear to be erroneous or vulnerable to interference under Article 227 of the Constitution. The Trial Court has rightly held that the defendant can seek to establish his defence by calling R.K. Jain as a witness, or by leading such other evidence as may be available to him. R.K. Jain cannot be said to be a necessary party or a proper party for the plaintiff to establish her case, as framed in the suit, or for the Court to adjudicate the *lis* between her and the defendant.

13. The jurisdiction of this Court under Article 227 of the Constitution would arise only in circumstances where the Trial Court

¹ (1992) 2 SCC 524 (paragraph 14).

² (2010) 7 SCC 417 (paragraph 24.3)

has committed an error of jurisdiction, or has come to a conclusion which is perverse, in the sense that no reasonable court would have reached such a conclusion on the materials before it. The defendant has failed to make out any such case, and it appears that the application of the petitioner for impleadment of R.K. Jain, as well as the present petition, are motivated by a desire to delay the proceedings before the Trial Court, and to complicate what is essentially a simple suit for recovery of money.

14. The petition, alongwith the pending application, is therefore dismissed with costs of ₹10,000/- payable in favour of the plaintiff.

PRATEEK JALAN, J.

JANUARY 28, 2022

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